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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JSB, a minor, by his parents and natural
guardians MARINA DIAZ and JOSE DIAZ,

Plaintiffs,

vs.

CARSON CITY SHERIFF HARRY W.
WHEELER,

Defendants.

CASE NO. 3:14-cv-00436-LRH-WGC

DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION TO LIFT
STAY

COMES NOW Defendant, CARSON CITY SHERIFF HARRY W. WHEELER, by and
through his attorneys of record, Thorndal Armstrong Delk Balkenbush & Eisinger, and hereby
submits his response to the Plaintiffs' motion for stay (Doc. #29) as follows:

This case arises out of the arrest of JSB, a minor, on August 19, 2014, and the Plaintiffs
seek damages against Carson City Sheriff's Deputy Harry W. Wheeler under federal and state
law. A scheduling order was entered by the Court on October 8, 2014, which set the close of
discovery for March 8, 2015, and the deadline for filing dispositive motions for April 7, 2015.
See, Doc. #9. On April 9, 2015, the Court granted an extension of the deadline for filing
dispositive motions to June 4, 2015. *See*, Doc. #14.

Thereafter, on June 4, 2015, the Defendant filed a Motion for Summary Judgment. *See*,

1 Doc. #19. One of several of the bases for the Defendant's Motion for Summary Judgment was
2 grounded in the argument that the Plaintiff could not prevail on his 42 U.S.C. §1983 claim
3 premised upon the Fourth Amendment because he had been found guilty by the Juvenile Court
4 Master of an offense arising out of the incident of August 19, 2014. Thus, one of the
5 Defendant's arguments in his dispositive motion was that the Plaintiff's §1983 claim was barred
6 by the United States Supreme Court's decision in *Heck v. Humphrey*, 512 U.S. 477, 486-87
7 (1994). The Defendant acknowledged in his motion, however, that this argument was implicated
8 by the outcome of the appeal of that adjudication by JSB.
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10 On November 24, 2015, this Court entered an order denying the Defendant's Motion for
11 Summary Judgment without prejudice and staying the case pending the outcome of the appeal
12 referenced above. The Nevada Supreme Court subsequently held, in a separate case, that a
13 portion of the ordinance under which JSB was convicted was unconstitutional. As such, and as
14 set forth in the Plaintiff's Motion to Lift Stay, the underlying juvenile charges against JSB were
15 dismissed.
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17 In their Motion to Lift Stay, the Plaintiffs have requested that the Court lift the stay
18 entered on November 24, 2015, and schedule a status conference to "ascertain the best way to
19 proceed" with this case. *See*, Doc. #30, p. 2, line 10. While the Defendant would also request
20 that the stay entered on November 24, 2015, be lifted, the Defendant believes that a status
21 conference is unnecessary at this time. While the Defendant would be happy to attend a status
22 conference should the Court desire that one be held, the Defendant is prepared to renew his
23 Motion for Summary Judgment at this time. As noted above, the Defendant's initial Motion for
24 Summary Judgment included several arguments other than that based upon *Heck v. Humphrey*
25 which the Defendant wishes to renew. Thus, the Defendant would request that the Court lift the
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1 stay in this case and permit the Defendant to file a Renewed Motion for Summary Judgment
2 consistent with those arguments previously raised by the Defendant in his initial motion.

3 DATED this 18th day of April, 2016.

4 THORNDAL ARMSTRONG
5 DELK BALKENBUSH & EISINGER

6 By: / s / Katherine F. Parks
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12 Attorneys for Defendant
13 CARSON CITY DEPUTY SHERIFF
14 HARRY W. WHEELER
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and that on this date I caused the foregoing **DEFENDANT'S RESPONSE TO PLAINTIFFS' MOTION TO LIFT STAY** to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

☒ United States District Court, District of Nevada CM/ ECF (Electronic Case Filing)

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

fully addressed as follows:

Luke Busby, Esq.
216 East Liberty Street
Reno, NV 89501
Attorney for Plaintiffs

DATED this 18th day of April, 2016.

/ s / **Sam Baker**

An employee of THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER